

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rolando Vasquez	Team: Squad #13	CCRB Case #: 201805010	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 06/21/2018 4:10 PM	Location of Incident: § 87(2)(b)	Precinct: 69	18 Mo. SOL 12/21/2019	EO SOL 12/21/2019	
Date/Time CV Reported Fri, 06/22/2018 11:13 AM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Fri, 06/22/2018 11:13 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Francisco Diaz	27416	952677	069 PCT
2. POM Louis Villegas	22408	953533	069 PCT
3. LT Joseph Shirvis	00000	924489	069 PCT
4. An officer			069 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Louis Villegas	Abuse: Police Officer Louis Villegas stopped § 87(2)(b)	§ 87(2)(b)
B.POM Francisco Diaz	Abuse: Police Officer Francisco Diaz stopped § 87(2)(b)	§ 87(2)(b)
C.POM Louis Villegas	Force: Police Officer Louis Villegas used physical force against § 87(2)(b)	§ 87(2)(b)
D.POM Francisco Diaz	Force: Police Officer Francisco Diaz used physical force against § 87(2)(b)	§ 87(2)(b)
E. An officer	Force: An officer used physical force against § 87(2)(b)	§ 87(2)(b)
F.POM Louis Villegas	Abuse: Police Officer Louis Villegas frisked § 87(2)(b)	§ 87(2)(b)
G.POM Louis Villegas	Abuse: Police Officer Louis Villegas searched § 87(2)(b)	§ 87(2)(b)
H.LT Joseph Shirvis	Abuse: Lieutenant Joseph Shirvis seized § 87(2)(b) s property.	§ 87(2)(b)

Case Summary

On June 22, 2018, § 87(2)(b) filed this complaint in-person at the CCRB.

On June 21, 2018, at approximately 4:10 p.m., § 87(2)(b) was outside § 87(2)(b) in Brooklyn. Police Officer Louis Villegas and Police Officer Francisco Diaz of the 69th Precinct stopped § 87(2)(b) (**Allegations A-B: Abuse of Authority, § 87(2)(g)**). PO Villegas and PO Diaz used physical force against § 87(2)(b) (**Allegation C-D: Force, § 87(2)(g)**). An officer allegedly stepped on § 87(2)(b) (**Allegation E: Force, § 87(2)(g)**). PO Villegas frisked and searched § 87(2)(b) (**Allegations F-G: Abuse of Authority, § 87(2)(g)**). Lieutenant Joseph Shirvis of the 69th Precinct allegedly authorized the seizure of § 87(2)(b)'s property (**Allegation H: Abuse of Authority, § 87(2)(g)**).

§ 87(2)(b) was summonsed for disorderly conduct and possession of marijuana.

There is no video evidence in this case.

Findings and Recommendations

Allegation A – Abuse of Authority: Police Officer Louis Villegas stopped § 87(2)(b)

Allegation B – Abuse of Authority: Police Officer Francisco Diaz stopped § 87(2)(b)

§ 87(2)(b) is a black male, who stands 6'0" tall, weighs 150 pounds, and was wearing a grey t-shirt and black sweatpants during the incident (BR01). § 87(2)(b) had a BMX bicycle which was green, yellow, and black. § 87(2)(b) entered § 87(2)(b) which is a liquor store. § 87(2)(b) left the store and was about to get on his bicycle when PO Villegas and PO Diaz approached him, told him he had a stolen bicycle, and asked where he got the bicycle from. § 87(2)(b) told the officers the bicycle was not stolen. § 87(2)(b) attempted to walk away from the officers but was physically restrained.

Event documents and the associated recordings revealed a 911 call from an individual named § 87(2)(b) who reported that his black and lime green BMX bicycle was stolen a week prior and he saw the man who stole the bicycle at § 87(2)(b) (BR02-05). The caller described the suspect as a black male wearing no shirt and black pants. The caller made a second 911 call in which he reported that the suspect was directly across the street from him at § 87(2)(b). According to timestamps on the event documents, officers arrived about a minute after this second 911 call.

The caller who reported the stolen bicycle to 911 could not be reached to provide a statement. The phone number identified in the event documents did not accept incoming calls. Database searches did not reveal an address or other identifying information associated with the phone number.

PO Diaz testified that the officers responded to the location in response to the above radio run (BR06). Upon arriving, PO Diaz and PO Villegas spoke briefly with the caller across the street from § 87(2)(b). The caller pointed across the street at § 87(2)(b) who was shirtless and standing next to a green bicycle. The caller said § 87(2)(b) stole his bicycle. The caller provided specific information about the model and appearance of his bicycle to the officers, but

PO Diaz was only able to recount that it was described as green. PO Diaz and PO Villegas approached § 87(2)(b) to investigate the stolen bicycle.

PO Villegas testified that he and PO Diaz arrived at the location and immediately observed § 87(2)(b) a tall, slim, black male wearing a white shirt (BR07). § 87(2)(b) was holding a neon green bicycle. Based on these matching descriptors from the radio run, PO Villegas suspected § 87(2)(b) was the person described in the radio run as the bicycle thief. During the interview, PO Villegas was shown the event documents which contain no reference of the suspect being described as tall or slim. PO Villegas did not remember from where he obtained these descriptors. PO Villegas and PO Diaz approached § 87(2)(b) to investigate the theft. PO Villegas and PO Diaz did not speak with the 911 caller until the end of the incident.

A report by an identifiable eyewitness to a crime is presumed to be reliable. People v. Rivera, 210 A.D.2d 895 (1994) (BR08).

Where an officer receives a radio transmission providing a general description of the perpetrator of a crime, discovers a suspect matching the general description in close proximity to the scene of the crime in a brief period after the occurrence of the crime, the officer will possess reasonable suspicion to stop the suspect, given the totality of the circumstances. People v. Lynch, 285 A.D.2d 518 (2001) (BR09).

§ 87(2)(g)
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Allegation C – Force: Police Officer Louis Villegas used physical force against § 87(2)(b)
Allegation D – Force: Police Officer Francisco Diaz used physical force against § 87(2)(b)
Allegation E – Force: An officer used physical force against § 87(2)(b)

§ 87(2)(b) testified that he told PO Diaz and PO Villegas his bicycle was not stolen and that he did not want to speak with them. PO Diaz said, “Cuff him.” § 87(2)(b) questioned why he was being arrested, repeated that his bicycle was not stolen, and started to go back inside the liquor store. PO Diaz and PO Villegas grabbed § 87(2)(b) by the shoulders and handcuffed him. After handcuffing § 87(2)(b) PO Villegas and PO Diaz slammed § 87(2)(b) to the floor. § 87(2)(b) was unable to describe how he was taken to the floor. § 87(2)(b) denied that he made any movements while he was being handcuffed or after he was handcuffed. After § 87(2)(b) was on the floor, an officer, § 87(2)(b) did not know who, stepped on § 87(2)(b)s back. § 87(2)(b) did not make any movements on the floor. § 87(2)(b) sustained scrapes and bruises on his leg from the forcible takedown and back pain due to being stepped on. § 87(2)(b) called for an ambulance immediately

after the incident and was treated on scene. § 87(2)(b) obtained no other medical treatment for his injuries.

§ 87(2)(b) called 911 immediately after the incident and the recording of this call was obtained. § 87(2)(b) told the 911 operator and an EMT that officers slammed him to the floor and he had pain to his left knee and wrist. § 87(2)(b) was connected to IAB and he left a voicemail message stating that officers slammed him to the floor. § 87(2)(b) did not report that he was stepped on and did not report back pain (BR21-22).

The FDNY Ambulance Prehospital Care Report reflects that § 87(2)(b) had abrasions on his left knee and wrist. § 87(2)(b) reported to medical personnel that officers slammed him onto the floor and handcuffed him after approaching him about a stolen bike (BR10).

The clerk at the liquor store denied witnessing the incident (BR11).

After being interviewed, § 87(2)(b) called and connected the undersigned investigator to two people at the liquor store who witnessed the incident. § 87(2)(b) saw § 87(2)(b) on the floor at the entrance of the liquor store after § 87(2)(b) was already handcuffed (BR12). § 87(2)(b) did not see how § 87(2)(b) was brought to the floor and did not see an officer step on § 87(2)(b). The second individual, identified only as “§ 87(2)(b)” refused to provide a statement about the incident.

PO Villegas and PO Diaz provided the following generally consistent testimony. § 87(2)(b) refused to answer the officers’ questions about the bicycle. § 87(2)(b) screamed and cursed at PO Villegas and PO Diaz. § 87(2)(b) attempted to leave the store by pushing in between PO Villegas and PO Diaz. § 87(2)(b) was still under investigation for the stolen bicycle, was attempting to leave, and did not comply with verbal commands to calm down. Eventually, the officers decided to handcuff § 87(2)(b) for their safety and because he was going to be placed under arrest for disorderly conduct. PO Diaz and PO Villegas grabbed § 87(2)(b)’s arms. § 87(2)(b) pulled his arms and body away from the officers which prevented them from handcuffing him. Believing § 87(2)(b) was attempting to leave the store, PO Villegas and PO Diaz pushed § 87(2)(b) to the floor to gain control of him. On the floor, § 87(2)(b) continued pulling his arms away. PO Diaz and PO Villegas were ultimately able to hold § 87(2)(b)’s arms together and handcuffed him. No officer stepped on § 87(2)(b).

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. NYPD Patrol Guide, Procedure 221-01 (BR13).

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Allegation F – Abuse of Authority: Police Officer Louis Villegas frisked § 87(2)(b)

Allegation G – Abuse of Authority: Police Officer Louis Villegas searched § 87(2)(b)

§ 87(2)(b) testified that he was picked up from the floor and an officer, he did not remember who, patted down his chest, groin area, and pockets over his clothing. The same officer searched § 87(2)(b)'s pockets and removed the contents which included a small plastic bag of marijuana. § 87(2)(b) was taken outside, placed in a police car, and told he was being arrested. Lt. Shirvis arrived and instructed PO Diaz and PO Villegas to issue a summons to § 87(2)(b). § 87(2)(b) was not arrested.

PO Villegas and PO Diaz provided the following generally consistent testimony. PO Villegas and PO Diaz made the determination to arrest § 87(2)(b) for disorderly conduct. § 87(2)(b)'s actions, including his screaming and cursing at the officers, throwing his arms around, and pushing passed the officers caused a crowd to gather. According to PO Villegas, the crowd consisted of eight to nine people. People from the crowd appeared annoyed and alarmed because § 87(2)(b)'s actions prevented people from leaving the store. In addition, during the physical struggle with § 87(2)(b) a ziploc bag of marijuana fell from § 87(2)(b)'s person. Lt. Shirvis arrived on scene after § 87(2)(b) was in custody and instructed PO Diaz and PO Villegas to issue § 87(2)(b) a summons instead of bringing him to the stationhouse. Neither officer knew why Lt. Shirvis made this decision.

PO Villegas acknowledged frisking § 87(2)(b) and searching § 87(2)(b)'s pockets after § 87(2)(b) was handcuffed. PO Villegas frisked and searched § 87(2)(b) incident to lawful arrest because he intended to bring § 87(2)(b) to the stationhouse to process his arrest for disorderly conduct and possession of marijuana.

PO Villegas generated a Stop, Question, and Frisk Report regarding this incident. The report reflects that § 87(2)(b) was frisked and searched incident to a lawful arrest. The endorsement history section of the report contains remarks from Lt. Shirvis which indicate § 87(2)(b) was not arrested because the complainant who reported the stolen bicycle could not positively state the bicycle was his to the exclusion of others (BR14).

Lt. Shirvis retired on September 1, 2018 and could not be interviewed (BR15).

When an officer has effected an arrest or intends to make an arrest, the search incident to arrest exception to the search warrant requirement will apply. People v. Reid, 24 N.Y.3d 615 (2014) (BR16).

After an arrest has been effected, officers are instructed to frisk and field search the prisoner prior to transporting him. NYPD Patrol Guide, Procedure 208-03 (BR17).

§ 87(2)(g)

Allegation H – Abuse of Authority: Lieutenant Joseph Shirvis seized § 87(2)(b)'s property.

§ 87(2)(b) testified that he was released after being issued summonses by PO Diaz. PO Diaz and PO Villegas took § 87(2)(b)'s bicycle when they left the location. The officers told § 87(2)(b) they were taking the bicycle because someone was being called to identify it. § 87(2)(b) was told he could get the bicycle if it was not identified, but § 87(2)(b) did not attempt to retrieve the bicycle.

PO Villegas and PO Diaz provided the following generally consistent testimony. Lt. Shirvis arrived on scene and interviewed the 911 caller regarding his stolen bicycle. Lt. Shirvis determined that the bicycle would be taken to the stationhouse so that the 911 caller could retrieve it once he had the chance to gather sufficient documentation the bicycle was his property.

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

§ 87(2)(b)

- PO Diaz has been a member of the service for six years and has been a subject in three prior CCRB complaints and four allegations, none of which were substantiated.
 - 201607266 involved a physical force allegation against PO Diaz which the Board closed as unsubstantiated.
- PO Villegas has been a member of the service for six years and has been a subject in seven prior CCRB complaints and 21 allegations, four of which were substantiated.
 - 201707882 involved substantiated frisk, search, and vehicle search allegations. The Board recommended Command Discipline A which the NYPD enforced.
 - 201707096 involved a substantiated frisk allegation. The Board recommended Command Discipline B but the NYPD enforced no penalty.
- Prior to retiring, Lt. Shirvis was a subject in one prior CCRB complaint and one discourtesy allegation which was closed as unsubstantiated by the Board.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- As of September 20, 2018, the NYC Office of the Comptroller has no record of a Notice of Claim having been filed regarding this incident (BR19).
- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)

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[REDACTED]

Squad No.: 13

Investigator: _____

Signature	Print Title & Name	Date
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Squad Leader: _____

Signature	Print Title & Name	Date
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Reviewer: _____

Signature	Print Title & Name	Date
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